MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 148 OF 1996

SOU. MUMTAZ ABDUL KARIM BEPARI)
R/o Aamai Galli, Ajara)
Dist. Kolhapur) APPELLANT

VERSUS

1. ABDUL KARIM GUDULAL BEPARI)
R/o Kasai Lane, Sadar Bazar)
Kolhapur)
2. KHERUNBI GUDULAL BEPARI)
R/o as above.)
3. THE STATE OF MAHARASHTRA) RESPONDENTS

Mr. P. D. Dalvi for appellant
Ms. Rashmi Gagwani h/f Ganesh Gole for R-1 & 2
Smt. V. R. Bhosale, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 18, 2007.

ORAL JUDGMENT:

. Respondents 1 and 2 are original accused 1 and 2 respectively. They were tried in the court of Judicial Magistrate, First Class, Ajara in regular Criminal Case No. 53 of 1992 for offences under

Sections 498(A), 323,504,506 read with 34 of the Indian Penal Code. By his judgment and order dated 25/8/95 the learned Magistrate acquitted the accused. Being aggrieved by the said judgment and order of acquittal, original complainant Mumtaz Bepari has filed the present appeal. For the sake of convenience I shall refer to the accused as per their status and description in the trial court.

2. At the trial the case of the complainant was that she was married to accused 1 about three years back. Accused 2 is her mother-in-law. After the marriage the accused treated her well for two to three months and thereafter started making illegal demands of money, scooter and T.V. The financial condition of the complainant's parents was not good and, therefore, she could not fulfil the demands of the accused. In spite of that her parents gave Rs.8,000/- to Rs.9,000/- to the accused in the year 1991. According to her the accused assaulted her. Thereafter the accused took her ornaments and drove her out of the house.

3. According to her on 13/7/92 at about 12.00 to 1.00 p.m. both the accused came to her parents house and demanded money and articles. When the

accused came to know that their demands are not likely to be fulfilled accused 1 slapped the complainant and abused her. The accused told her that she should not come to their house unless their demands are fulfilled. The complainant, therefore, filed private complaint against the accused.

4. In support of her case, the complainant examined herself on oath. The defence of the accused was that they were falsely implicated in the case. According to the accused the complainant was not willing to cohabit with accused 1. They denied that they ever ill-treated or assaulted the complainant or made any illegal demands of money and articles.

5. After perusing the evidence on record the learned Magistrate came to a conclusion that the complainant had failed to prove that the accused in furtherance of their common intention subjected the complainant to cruelty by assaulting her to meet illegal demands of money and other articles. The learned Magistrate came to a conclusion that the complainant had failed to prove that in furtherance of their common intention the accused insulted the

complainant. The learned Magistrate also held that the complainant had failed to prove that in furtherance of their common intention the accused gave criminal intimidation to the complainant. It is the said judgment and order which is challenged in this appeal.

6. I have heard at some length the learned counsel appearing for the appellant/complainant. He submitted that the learned Magistrate erred in discarding the evidence of the complainant which is is supported by the evidence of PW 2 Daud Mulla. He submitted that the complainant's evidence is cogent and it inspires confidence. He submitted that the impugned judgment and order is perverse and, therefore, it may be set aside. He prayed that the accused be convicted in accordance with law.

7. I have also heard Ms. Rashmi Gagwani, learned counsel appearing for the respondents. She submitted that the learned Magistrate has rightly acquitted the accused. She submitted that the evidence of the complainant is replete with discrepancies. The evidence of PW 2 Daud Mulla also does not inspire confidence. It does not

corroborate the evidence of the complainant. The learned counsel contended that Rahim Bux in whose presence Rs.9,000/- were allegedly given by the father of the complainant has not been examined. PW 2 Daud Mulla has stated that he had seen the accused for the first time when the incident took place. He has not been able to give the date on which the accused allegedly demanded Rs.25,000/- from the parents of the complainant. He is, therefore, a got up witness. The learned counsel further submitted that the learned Magistrate has rightly come to a conclusion that the complainant never resided with the accused. In fact she was not able to state how many rooms were there in the house of the accused. It is, therefore, clear that a false story has been created by the complainant. She submitted that the impugned judgment and order is well reasoned and it does not merit any interference from this court.

8. A careful reading of the evidence of the complainant makes it clear that the complainant is not telling the truth. Though in the examination-in-chief she has stated that demand of money was made by the accused in the cross-examination she has stated that she has not

disclosed the fact that the accused had demanded Rs.25,000/-. She has further stated that since the time of her marriage, her husband had come to Ajara on five occasions. However, this fact is not averred in the complaint. When she was questioned about this she was unable to give any answer. She has then stated that the accused assaulted her at Ajara and asked for an amount of Rs.9,000/- in the presence of Daud Mulla and Rahim Bux. Rahim Bux has not been examined. PW 2 Daud Mulla has not mentioned about this demand in his evidence at all, therefore, this demand is not proved. She has further stated that after her marriage till the filing of the complaint she had been to Kolhapur on three to four occasions. She was unable to state how many rooms are there in the house of the accused. The learned Magistrate has, therefore, rightly recorded a finding that the complainant had not gone to the house of the accused after marriage but was staying with her parents. This is supported by her admission that since the time of her marriage on four to five occasions, the accused had come to her parents house. She has further stated that she had not disclosed the fact that the accused assaulted her or asked for money from her to her maternal uncles. The evidence of the

complainant does not inspire confidence.

9. As already stated by me PW 2 Daud Mulla has not stated anything about the demand of Rs.9,000/- allegedly made by the accused in his presence. He has stated that in his presence the accused were demanding an amount of Rs.25,000/- from the parents of the complainant. He has further stated that when the complainant told the accused that because of the economic condition of her parents, they would not be able to pay the said amount, accused 1 gave a slap on her face. It is further stated that he and other witnesses tried to intervene in the incident. However, he is unable to give the date and month of the incident. Surprisingly he has stated that he had seen the accused for the first time on the date of the incident. This statement appears to be false because this witness admittedly resides in the house which is adjacent to the house of the complainant. It appears, therefore, that he is not telling the truth. He has made an effort to support the complainant but has miserably failed in that.

10. In my opinion, the learned Magistrate has rightly held that the complainant has failed to

prove her case. The view taken by the learned Magistrate is a reasonably possible view which cannot be interfered with in this appeal against acquittal. The appeal is, therefore, dismissed.

JUDGE.

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SOU. MUMTAZ ABDUL KARIM BEPARI .. APPELLANT

VERSUS

ABDUL KARIM GUDULAL BEPARI & ORS.. RESPONDENTS

Mr. P. D. Dalvi for appellant

Ms. Rashmi Gagwani h/f Ganesh Gole for R-1 & 2

Smt. V. R. Bhosale, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 18, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,

this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 148 OF 1996

DATE OF DECISION:18/9/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the

Constitution of India, 1950 or any)
Order made thereunder?)

5. Whether it is to be circulated to)
the Civil Judges?)

6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)